

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PATRICIA A. JOHNSON**

Claimant

VS.

**VENTURE STORES**

Respondent,  
Self-Insured

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Docket No. 210,246

**ORDER**

Respondent appealed the October 8, 1999 Award entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on February 2, 2000.

**APPEARANCES**

Roger D. Fincher of Topeka, Kansas, appeared for the claimant. Janell Jenkins Foster of Wichita, Kansas, appeared for the respondent.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a January 18, 1996 accident in which the claimant slipped and fell on ice striking the back of her head. Judge Benedict found that claimant sustained a brain injury in that fall and awarded her permanent total disability benefits.

The respondent contends Judge Benedict erred by (1) denying its request to withdraw the stipulation that claimant sustained an injury in the accident, (2) finding that claimant's psychological problems are related to the accident, (3) finding that claimant sustained a 75 percent whole body functional impairment, and (4) awarding claimant permanent disability benefits.

Conversely, claimant contends the Award should be affirmed.

The only issues before the Appeals Board on this appeal are:

1. Did the Judge err by denying the respondent's request to withdraw the stipulation that claimant sustained personal injury in the January 1996 accident?
2. What is the nature and extent of injury and disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The parties stipulated that on January 18, 1996, Ms. Johnson slipped and fell in the Venture Stores' parking lot and struck her head. But Venture disputes that Ms. Johnson sustained any injury as that term is defined by the Workers Compensation Act.

The Board agrees with, and adopts as its own, the findings and conclusions set forth in the Award. The greater weight of the evidence establishes that, as a result of the January 18, 1996 accident, Ms. Johnson sustained a mild traumatic brain injury and now suffers from severe post-concussion syndrome, anxiety, and depression. That conclusion is supported by the testimony of Dr. James R. Eyman, who first saw Ms. Johnson in February 1996. The Board acknowledges that Venture Stores' expert medical witness, Dr. Michael E. Ryan, believes that Ms. Johnson's problems are mainly psychological and psychiatric in origin. But even Dr. Ryan diagnosed a minor closed head injury and testified that Ms. Johnson's anxiety and depression were exacerbated by the accident.

The Board affirms Judge Benedict's finding that Ms. Johnson is entitled to receive permanent total disability benefits. The greater weight of the evidence indicates that Ms. Johnson is unable to engage in substantial and gainful employment. Dr. Eyman's conclusion that Ms. Johnson is unable to work is unchallenged. Additionally, both doctors agree that Ms. Johnson needs additional treatment but they disagree as to which type of treatment is appropriate – Dr. Eyman believes psychotherapy is appropriate but Dr. Ryan believes psychiatric treatment is in order.

The Appeals Board affirms the Judge's finding that Ms. Johnson sustained a brain injury in the January 1996 accident. Therefore, the request to withdraw the stipulation that Ms. Johnson sustained personal injury in the accident is rendered moot as the Appeals Board has addressed that issue in determining the nature and extent of injury and disability. The Workers Compensation Act provides that injury means "any lesion or change in the physical structure of the body." But the Act also provides that the injury does not have to be of such character as to present external or visible signs of its existence. The Act reads:

(e) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. . . .<sup>1</sup>

The Appeals Board concludes that Ms. Johnson's striking her head on the pavement and sustaining a concussion and brain injury satisfies the definition of injury.

**AWARD**

**WHEREFORE**, the Appeals Board affirms the October 8, 1999 Award entered by Judge Benedict.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Janell Jenkins Foster, Wichita, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 1995 Supp. 44-508.